

**IN THE UNITED STATES DISTRICT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
NEWNAN DIVISION**

<b>DANA LEE,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Civil Action File No.</b>
	)	<b>3:07-CV-108-JTC</b>
	)	
<b>ETHAN ALLEN RETAIL, INC.,</b>	)	
<b>a Delaware corporation,</b>	)	
	)	
<b>Defendant.</b>	)	

**DEFENDANT’S ETHAN ALLEN’S RENEWED MOTION FOR SUMMARY  
JUDGMENT**

Defendant Ethan Allen Retail, Inc. (“Ethan Allen”), by and through its undersigned counsel and pursuant to Federal Rule of Civil Procedure 56<sup>1</sup> and Local Rule 56.1, moves this court to grant summary judgment in its favor and to dismiss the Complaint in its entirety.<sup>2</sup> Defendant moves for summary judgment on Plaintiff’s overtime claims under 29 U.S.C. §§ 207(i) (“207(i)”) and 213(a)(1) of

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<sup>1</sup> Federal Rule of Civil Procedure 56(b) provides: “A party against whom relief is sought may move at any time, with or without supporting affidavits, for summary judgment on all or part of the claim.”

<sup>2</sup> On August 8, 2008, Ethan Allen filed a motion for summary judgment on the remaining claims of Dana Lee. (See Docket Entry No. 67.) The court granted Plaintiff’s motion to stay a ruling on Defendant’s Motion for Summary Judgment until she deposed Ethan Allen’s 30(b)(6) designee, Corey Whitely. (See Docket Entry No. 78.) Based on the testimony of Mr. Whitely, Ethan Allen now renews its motion to add undisputed evidence concerning the sales generated by Dana Lee related to house calls and accompanying legal authority. Ethan Allen submits that this additional evidence supports its assertion that Lee was exempt from overtime as an outside salesperson.

the Fair Labor Standards Act (“FLSA”), because based on the undisputed facts as a matter of law, Plaintiff was exempt from overtime under the retail or service exemption and the outside sales exemption.

In support of its Motion, Ethan Allen relies upon the accompanying Statement of Material Undisputed Facts and Memorandum of Law in Support of Defendant’s Motion for Summary Judgment.

WHEREFORE, Ethan Allen prays that the Court grant summary judgment in its favor and dismiss Plaintiff’s claims under the FLSA.

Respectfully submitted this 28th day of November, 2008.

/s/ Eric R. Magnus

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Eric R. Magnus

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By their signature above, counsel for Defendant represent that, pursuant to Local Rules 5.1B and 7.1D, this motion and memorandum were prepared in the font of Times New Roman, 14 point.

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<b>a Delaware corporation,</b>	)	
	)	
<b>Defendant.</b>	)	

**CERTIFICATE OF SERVICE**

I hereby certify that on November 28, 2008, I electronically filed the foregoing **DEFENDANT ETHAN ALLEN'S RENEWED MOTION FOR SUMMARY JUDGMENT** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorney(s) of record:

Kimberly N. Martin  
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s/Eric R. Magnus  
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